

**TRANSITIONAL REVIEW MECHANISM UNDER PARAGRAPH 18
OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA**

Questions to China from the European Communities

1. The European Communities is transmitting the following comments and questions well in advance of the meeting of the SPS Committee of 27-28 October 2004, in order for the Chinese authorities to reply and to complete any information that may be incomplete.
2. Once the information to be provided by China in accordance with paragraph 18 and Annex 1A of its accession protocol has been received, the European Communities might come back with additional questions.
3. The EC's comments relate to several responses from China contained within G/SPS/GEN/452 dated 11 November 2003 which was China's response to the 2003 TRM exercise. The European Communities feels the replies do not respond to the specific questions raised by the European Communities last year. One other issue relates to the difficulties caused by China's position that it is not a member of the OIE which China has repeated in various official contacts with the European Communities.

Transparency

4. The European Communities would like to re-emphasize the importance of transparency with regard to the proper functioning of the SPS Agreement. An important aspect of notifying is that notification should occur before the measures are adopted so as to leave time for third-country comments to be taken into account.
5. Last year the European Communities referred to several specific examples where the date of entry into force for several notifications was before the date of notification and therefore it was difficult to see how submitted comments could be taken into account. There have been further examples of this during 2004. For instance, G/SPS/N/CHN/79 was notified in August 2004 with a proposed date of adoption, 9 May 2004 and a proposed date of entry into force of 1 November 2004. In this case, the notified final date for comments, before 30 October 2004, is only the day before the date of entry into force.
 - Could China explain how comments were taken into account under these circumstances?
 - Can China explain what steps it has undertaken to ensure that other Member countries are given a realistic opportunity to comment on notified measures in advance of their application?

Reference to "Non-membership of OIE"

6. China has taken on a number of occasions the official position that as a "non-member of OIE", it is not involved in the creation of OIE standards, and therefore needs time to analyse whether these standards are appropriate for China. This position is not consistent with the obligations under Article 3.2 and Article 5 of the SPS Agreement for WTO Members to use relevant international standards as a basis for their sanitary and phytosanitary measures.

7. In that respect, the European Communities would like to recall that China has committed in paragraph 2 of the EC-China record of understanding on SPS measures that "China shall recognize the OIE, the Codex Alimentarius and the IPPC as the reference organizations in the relevant fields, as provided for by the SPS Agreement", and this regardless of China's participation or not to the works of the OIE.

8. The European Communities would also like to point out that China participates to some extent in OIE and has already in the past made notifications to the OIE of certain animal diseases, in particular in the case of Avian Influenza.

9. In that context, the European Communities would like to emphasize that the sanitary and phytosanitary measures not in accordance with international standards, guidelines and recommendations issued by the WHO, the IPPC and the OIE, and which may have a significant impact on trade, shall be justified on the basis of a risk assessment.

10. The SPS Agreement is based on the respect of international standards except where a scientific evidence justifies a different approach. The systematic failure of any Member country to respect these standards simply because they do not attend the meetings of the relevant organization is not compatible with the obligations of WTO membership.

With this regard:

11. In G/SPS/GEN/452 dated 11 November 2003, China's response to the 2003 Transitional Review Mechanism, it is stated that :

"The Government of China attaches great importance to the principle that SPS measures shall be based on international standards. In December 2001, AQSIQ issued "Regulatory Measures Governing the Adoption of International Standards" (AQSIQ Decree No. 10), which stipulates clearly the principles and procedures for adopting international standards."

- Can China please clarify how on the one hand it claims to comply with Article 3.2 and Article 5 of the SPS Agreement by respecting the relevant international standard but on the other hand adopts a position as a "non member of the OIE" whereby it has to assess these on a case-by-case basis?
- Has China based the sanitary and phytosanitary measures on risk assessment when these measures do not conform to international standard guidelines or recommendations?

12. The European Communities would like to emphasize the important detrimental effect to trade in relation to the above, firstly in relation to BSE, but also with regard to the excessive delays applied by China to recognize disease-free status of EC member States, sometimes several years after the recognition by the OIE and other WTO Members.

BSE related measures

13. The European Communities reiterates the importance of Article 2.2 of the SPS Agreement that obliges Members to base sanitary and phytosanitary measures on scientific principles taking into account relevant process and production method, relevant inspection and sampling methods. It is of great importance that the scientific basis of measures is justified where appropriate.

14. Furthermore, The European Communities would like to recall China's commitments as stated in paragraph 199 of the Working Party Report on China's Accession to the WTO which state that: "China would ensure that SPS measures would not be maintained without sufficient scientific evidence".

15. For example, in the case of BSE related trade, China has not produced any scientific evidence supporting the measures it has been adopting. At the same time it has not provided any response to the conclusions of a panel of Chinese and EC scientific experts, nearly two years after these measures were adopted, suggesting that its measures do not have any scientific basis. The European Communities would like to emphasize the economic importance of the trade restrictive measures adopted by China which affect a wide range of products such as pet food, pork gelatine, fish meal, bovine embryos and semen and cosmetics.

With this regard:

- Why does China not think that the internationally recognized standards (WHO and OIE) in connection with ingredients derived from cattle and sheep tissues coming from countries and regions affected by BSE do not fulfil the level of protection set up by China?
 - Can China explain the scientific basis for deviating from the existing international standards, as required in Article 2 of the SPS Agreement, for the measures introduced via G/SPS/N/CHN/3, 4, 6 and 7 which relate to import restrictions on a range of products related to BSE?
 - What is the level of protection applied by China to the imports in comparison with the level of protection applied to national production?
 - What is the scientific justification for this?
 - Has China considered other less trade restrictive alternatives?
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